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Restriction Requirement

The Examiner has restricted the examination of the above-identified application to either of two groups of claims: I) Claims 1-10 drawn to the container of the present invention and II) Claims 11-13 drawn to methods of sealing contents in the container of the present invention. Applicant affirms the prior provisional election to prosecute the invention of the container claimed in group I, pending Claims 1-10.

Objection to Specification

The Examiner has objected to the specification stating that the specification does not support the phrase "said seal congruent for a sector of said perimeter and being spaced apart from said perimeter at a point circumferentially displaced from said sector." Applicants respectfully point out that this language can be found at Page 3, lines 1-20. The support for this idea is demonstrated in the figures and described in the specification at pages 11-12. Applicants request that this objection be withdrawn.

§112 Rejection

The Examiner has rejected Claim 10 under 35 U.S.C. §112, second paragraph, as being indefinite in that there was insufficient antecedent basis for this limitation in the claims for "said hinge". By the amendments presented herein, it is now clear that the hinge is a positive element of the claimed container.

§102 Rejection

The Examiner has separately rejected Claims 1-10 under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,339,973 issued to Edwards et al. on August 23, 1994 ("Edwards" hereinafter), or U.S. Pat. No. 3,676,159 issued to Fallowfield et al on July 11, 1972 ("Fallowfield" hereinafter), or U.S. Pat. No. 5,788,378 issued to Thomas on August 4, 1998. Applicant respectfully traverses this rejection as applied to the amended claims of the application.

Edwards relates to a container having an improved seal system. Specifically, the seal system comprises cooperative curved sections of the tray and cover rims which result in the curved section of the top rim contacting the curved section of the bottom rim through an arc of at least 180°. The seal extends around the entire perimeter of the tray and the cover. (C2:L1) Nowhere is it taught or suggested that the container would contain a slider to manipulate the seal. Further, nowhere is it taught or suggested that the container comprises a track on which the slider moves, which is partially juxtaposed to the seal and partially not-juxtaposed to the seal at the auxiliary track part of the track.

Fallowfield relates to a reusable package with a reclosable lid. The package has flanged body and lid and a means for reclosing the lid to the body. Nowhere does Fallowfield teach or suggest the use of a slider or a track juxtaposed to the seal for the slider to move on. It does not suggest the use of an auxiliary track partially not juxtaposed to the seal.

Thomas relates to a reclosable stand-up bag having a mechanical seal with a slider. The slider of Thomas acts directly on the seal of the bag. Nowhere is it taught or suggested that the bag could comprise a track juxtaposed to, but spaced apart from the seal.

By contrast, the container of the above-identified application claims as specific claim elements a body and cover, a slider to manipulate the seal and a track, which comprises an auxiliary track, on which the slider travels. The track has a portion which is juxtaposed to the seal and a portion which is not juxtaposed to the track.

In order to anticipate the claims of the above-identified application under 35 U.S.C. § 102(b) it must be shown that each and every element of the claims must be found in the respective prior art reference. Kalman v. Kimberly-Clark Corp., 218 USPQ 781 (Fed. Cir., 1983). Applicant submits that each element of the present claims are not found in Edwards, in Fallowfield, or in Thomas since no teaching or suggestion is made therein regarding the use of a slider on the container which travels on a track which is partially juxtaposed to the seal and partially not operatively juxtaposed to the seal at an auxiliary track. It is therefore respectfully submitted that a rejection under 35 U.S.C. §102(e) of the amended claims of the above-identified application over Edwards, Fallowfield or Thomas is improper and should be withdrawn.

Further, Applicant submits that the container of the present invention is not obvious over the separate or combined teachings of Edwards, Fallowfield, and Thomas. To properly reject a claim as being obvious under 35 U.S.C. §103, the prior art reference must teach or suggest all the claim limitations. MPEP §2143.03 and In re Royka, 180 USPQ 580 (CCPA 1974). Since nowhere in any of the reference is it taught or suggested that the track for the slider be partially juxtaposed and partially not juxtaposed to the seal, the claims of the present invention cannot be properly rejected under §103.

§103 Rejection / Obviousness-type Double Patenting Rejection

The Examiner has rejected Claims 1-10 of the above identified application under 35 U.S.C. §103(a) as being unpatentable over U.S. Pat. No. 6,092,687 issued to Hupp et al. on July 25, 2000 ("Hupp" hereinafter). Also, the Examiner has rejected Claims 1-10 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Hupp. Applicant respectfully traverses these rejections.

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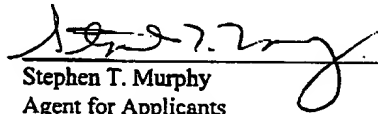
Hupp relates to a collapsible, stackable, self-supporting container comprising a collapsible body, a lid and a closure means which could be a seal/slider combination. However, Hupp does not disclose a track juxtaposed with, yet set apart from the seal for the slider to travel on, nor does Hupp disclose the idea of the track comprising an auxiliary track which is not juxtaposed to the seal.

Applicant submits that since nowhere in Hupp is it taught or suggested that the container have a track partially juxtaposed with, yet set apart from the seal the claims of the present invention cannot be properly rejected as being obvious, either under §103 or under the doctrine of obviousness-type double patenting, and the rejection should be withdrawn.

Conclusion

In light of the amendments to the claims and the above remarks, it is requested that the Examiner reconsider and withdraw the objection to the specification and the rejections under 35 U.S.C. § 112, second paragraph, under 35 U.S.C. §102(b), under 35 U.S.C. §103(a) and under the doctrine of obviousness-type double patenting, with respect to pending Claims 1-10. Early and favorable action in the case is respectfully requested.

Respectfully submitted,


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VERSION WITH MARKINGS TO SHOW CHANGES MADEIn the Claims

Claim 1 has been amended as follows:

1. (Amended) A container comprising a container body having an aperture with a perimeter therearound, a cover having a perimeter therearound which corresponds to the perimeter around the aperture of the body, a seal at least partially juxtaposed to said perimeter, and a slider, said container closable with [a] the cover[, said container having an aperture with a perimeter] and at least partially sealable therearound with [a] the seal,
said container further comprising a track juxtaposed to, but being spaced apart from said seal[being sealable with a slider], whereby said slider is movable in [a] the track
said track comprising an auxiliary track not operatively juxtaposed with the seal
[path juxtaposed with at least a portion of said perimeter,
said slider moving in a track, at least a portion of said track being spaced apart from said seal].
2. (Amended) A container according to Claim 1 [having a perimeter,] said container being openable or closable with [a] the slider movable along [a] the track, whereby said slider applies or releases a seal as said slider moves along said track, said track and said seal being congruent for a sector of said perimeter and being spaced apart from said perimeter at a point circumferentially displaced from said sector.
10. (Amended) A container according to Claim 9 further comprising a hinge which attaches the cover to the container body, wherein said hinge is disposed outboard of said seal.